IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 22ND SEPTEMBER 2006 / 31ST BHADRA 1928

ST.Rev..No. 488 of 2004

TA.234/2002 of KERALA STAT,TVM.
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA REP. BY DEPUTY COMMISSIONER (LAW), COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER (SHRI V.V. ASOKAN)

RESPONDENT/APPELLANT/ASSESSEE:

K.JAYADEVAN, HOTEL GREEN PALACE, TRIVANDRUM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 22/09/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV. NO. 488 OF 2004

Dated this the 22nd September, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised in the S.T.Rev. filed by State is whether the tribunal was justified in cancelling the estimation of turnover partly sustained in first appeal, following the decision of this Court in Polakulath Tourist Home v. State of Kerala ((2001) 9 KTR 511). On going through the assessment order, we find that during inspection of the bar hotel excess stock was found in respect of eleven items of Indian made foreign liquor and shortage noticed in respect of six items of liquor. Besides this, excess was noticed in soda and soft drinks. Dealer admitted the offence and paid compounding fee of Rs. 15,000/=. Accounts were, therefore, rejected and estimation of turnover was made by adding 15 per cent to the liquor turnover. On first appeal, the appellate authority though sustained rejection of Books of Account and estimation of turnover, reduced the addition to 10

per cent. On second appeal filed by assessee, the tribunal just followed the decision of this Court above referred and allowed the assessee's appeal by cancelling the addition to the turnover of liquor.

2. We find the decision of this Court relied on by tribunal is based on the earlier decision of this Court in Lovely Thomas v. State of Kerala ((1999) 113 STC 505). Even though the appeal filed against this decision is dismissed by the Supreme Court, a Full Bench of this Court in Mary Antony v. State of Kerala ((2000)8 KTR 545) practically over-ruled the decision of this Court in Lovely Thomas v. State of Kerala ((1999) 113 STC 505). We are unable to accept the decision of the tribunal because, to our mind, the source of excess physical stock of liquor found on inspection over the quantity purchased and accounted, has to be explained by the person in possession of it, i.e. the assessee. To our mind, there is no presumption under the Statute that all liquor found in Kerala has it's source from Beverages Corporation merely because the legal marketing of

Indian made foreign liquor is the monopoly business of the Government Company. Probably, the decision of the tribunal applies to shortage in liquor which was noticed on inspection which arises on account of failure to account sales. However, any excess quantity found over purchased quantity is to be explained by the dealer alone as there is no presumption that the stock and sale of all liquor by the dealer is sourced from Beverages Corporation. Moreover, the decision of this Court relied on by the Tribunal cannot be applied to the facts of this case because, on facts, we find that out of the variations noticed, 2/3rd accounts for excess stock of liquor. We therefore allow the S.T. Rev. by reversing the order of the tribunal and restoring the order of first appellate authority.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.